

EDWARD G. TAYLOR

IBLA 80-295

Decided May 15, 1980

Appeal from decision of the Oregon State Office, Bureau of Land Management holding the Red Rock and Whiskey Peak mining claim abandoned and void. 3833 (OR).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

APPEARANCES: Edward G. Taylor, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Edward G. Taylor appeals from a decision dated December 10, 1979, by the Oregon State Office, Bureau of Land Management (BLM), declaring the Red Rock and Whiskey Peak mining claim abandoned and void for failure to submit a copy of the official record of the notice of location on or before October 22, 1979, as required by section 314 of the

Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulation 43 CFR 3833.1-2(a). ^{1/}

On October 22, 1979, BLM received from appellant a proof of labor affidavit for the claim, a check for \$5, and a quitclaim deed. BLM returned the documents and the check to appellant.

[1] Appellant states on appeal that he inadvertently failed to include a copy of the notice of location when the other material was submitted to BLM. He refers to the volume and page at which it is recorded in the county courthouse. Appellant further states that the assessment work has been performed since 1960, that he owns the claim, and intends to keep it. The pertinent regulation, 43 CFR 3833.1-2(a), implementing section 314(b), FLPMA, 43 U.S.C. § 1744(b) (1976), provides in relevant part:

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. [Emphasis supplied.]

Appellant has resubmitted the proof of labor affidavit, the quitclaim deed, and the check for \$5. Appellant included a copy of the certificate of location which was received and date stamped by BLM on January 10, 1980. The certificate of location was not received by BLM by the date required in the above quoted regulation. Failure to file the required notice of location timely must result in a conclusive finding that the claim has been abandoned and is void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a).

Appellant's original submission of the proof of labor affidavit and the check for \$5 satisfies the requirements of 43 CFR 3833.2-1 and 43 CFR 3833.1-2(d) respectively. However, the submission of these documents does not cure the failure to file timely the notice of location as required by 43 CFR 3833.1-2(a), quoted above. Therefore, the claim must be conclusively deemed abandoned and void under the specific mandate of the statute and regulation.

^{1/} The decision also indicated that where an original notice of location cannot be shown, secondary evidence of location proving establishment of claims is acceptable under certain circumstances. This is not the situation in this case as the original notice of location has now been shown. See discussion, *infra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge

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